

DECISION OF THE BOARD

Section 15-4.C of the LUDC authorizes the Board to grant variances “when, owing to special conditions or exceptional situations, a literal interpretation of [the LUDC] will result in unnecessary hardship or exceptional practical difficulties to the property owner.” Section 327(a)(3) of Title 22 of the Delaware Code provides that the Board may:

Authorize, in specific cases, such variance from any zoning ordinance, code or regulation that will not be contrary to the public interest, where, owing to special conditions or exceptional situations, a literal interpretation of any zoning ordinances, code or regulation will result in unnecessary hardship or exceptional practical difficulties to the owner of property so that the spirit of the ordinance, code or regulation shall be observed and substantial justice done, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any zoning ordinance, code, regulation or map

In order to grant area variances,¹ the Board must find that exceptional practical difficulties exist.² An exceptional practical difficulty exists “where the requested dimensional change is minimal and the harm to the applicant if the variance is denied will be greater than the probable effect on the neighboring properties if the variance is granted.”³

Section 15-4.C.2 of the LUDC identifies the following factors to weigh when considering a variance request:

- (1) The variance relates to a specific parcel of land, and the hardship is not shared generally by other properties in the same zoning district and vicinity.
- (2) The variance can be granted without substantial detriment to the public good.
- (3) The benefits from granting the variance would substantially outweigh any detriment.
- (4) Approval of the variance would not substantially impair the intent and purposes of the comprehensive plan or the LUDC.

Section 15-4.C.3 of the LUDC also authorizes the Board to consider the following factors when considering variance requests:

- (1) Nature of the zone where the property lies.
- (2) Character of the immediate vicinity.
- (3) Whether the restrictions, if lifted, would affect neighboring properties and uses.
- (4) Whether the restriction would tend to create a hardship on owner in relation to normal improvements.

After the public hearing was closed and the Board had been given an opportunity to ask questions and clarify the details of the requested variance, a motion was made and seconded to approve

¹ Area variances address parcel characteristics such as “height, size or extent of lot coverage, size of the buildings, placement of the building on the site or other restrictions relating to the physical characteristics of the site.” *Wawa, Inc. v. New Castle County Bd. of Adjustment*, 929 A.2d 822, 830-31 (Del. Super. Ct. 2005). There is no dispute in the record that an area variance is being requested.

² *Bd. of Adjustment v. Kwik-Check Realty, Inc.*, Del. Supr. 389 A.2d 1289, 1291 (1978).

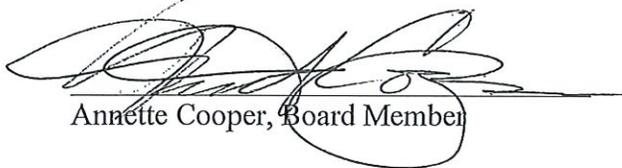
³ *Wawa*, 929 A.2d at 831.

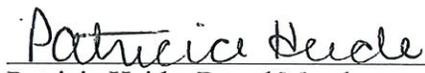
application 23-001 to grant a 3.5-foot variance from the 10-foot minimum side yard setback requirement to allow the construction of an addition that will be 6.5 feet from the property line.

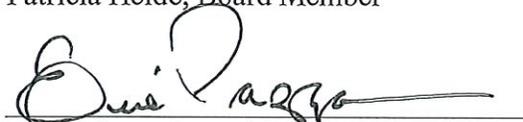
Based on the information contained in the application, the comments and report from Town Staff, the testimony presented at the public hearing, and for additional reasons specifically outlined herein, the Wyoming Board of Adjustment voted 5 to 0 to approve a variance from the 10-foot side yard setback requirement to allow the construction of an addition as indicated in the application that will be situated 6.5 feet from the side property line. The Board finds that the variance requested is minimal and will not have a negative impact on the neighboring properties. Additionally, the Board finds that there would be greater harm to the Applicant by denying the variance than any negative impact on neighboring properties by granting the variance because it would have minimal impact on neighboring properties since this side of the Property is adjacent to a public right-of-way.

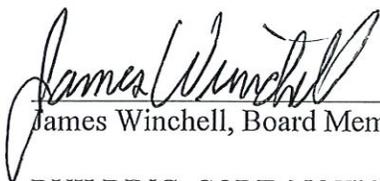
For the reasons stated above and as more specifically described herein, the Board finds all the conditions required to grant the requested variance have been satisfied, and Variance Application 23-001 is hereby approved.


Beverly Cannon, Board Member


Annette Cooper, Board Member


Patricia Heide, Board Member


Ernie Piazza, Board Member


James Winchell, Board Member

BUILDING CODE NOTICE: Except as otherwise expressly stated in this written decision, any approval that may have been granted herein shall not relieve the Applicants and/or Property Owners from the obligation to fully comply with all applicable laws, ordinances, rules, and regulations of the Town of Wyoming, or any other applicable jurisdiction, pertaining to the use of the Property.

NOTICE: Pursuant to 22 Del. C. § 328(a), this decision may be appealed to the Superior Court of the State of Delaware within thirty (30) days from the date of filing of the Board's written decision in the office of the Town of Wyoming.

Date of filing the Board's written decision in the office of the Town of Wyoming and mailing the decision to Doug and Sarah Denison: July 7, 2023